IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Jail Appeal No. 195 of 2004

Yogesh Chandra
S/o Shri Satish Chandra
R/o Moksha Ashram
Rishikesh, District Dehradun …….Appellant (in jail)

Versus

State ……..Respondent.

Shri G.D. Kandpal, learned Amicus Curiae for the appellant.
Shri Rajeev Mohan Birkhani, learned A.G.A. for the State.

Hon'ble Prafulla C. Pant, J

This appeal, preferred under Section 374 (2) of Code of Criminal Procedure, 1973 (for brevity herein after referred as Cr.P.C.), is directed against the judgment and order dated 21.04.2004, passed by learned Additional Sessions Judge/Fast Track Court I, Dehradun, in Sessions Trail No. 175 of 2003, whereby appellant Yogesh Chandra, has been convicted under Section 308 of Indian penal Code, 1860 (for brevity herein after referred as I.P.C.), and sentenced to rigorous imprisonment for three years and also to pay fine of Rs. 5,000/- in default of payment of which the he is directed to undergo rigorous imprisonment for further period of six months.

2. Heard learned counsel for the parties and perused the record.

3. Prosecution story, in brief, is that on 17.10.2003, at about 7:30 P.M., in Sumanpuri within the limits of police station Raipur, District Dehradun, P.W. 1 Simran

Kaur, aged 22 years, was going towards her house when accused/appellant Yogesh Chandra, caught hold of her and overpowered her. He told the injured that she is not amenable to his demand as such, he would kill her. Accused/appellant, thereafter started hitting blows at Simran with stone. Consequently, the girl received injuries on her head, lips, hands and feet. She shouted for help on which her father P.W. 2 Preet Pal Singh, neighbours P.W. 3 Rakesh Goel and one Balpreet Chaddha, came there and saw accused/appellant Yogesh Chandra, giving beating to P.W. 1 Simran Kaur. On seeing the aforesaid persons, the accused/appellant, ran away from there. The injured was immediately taken to a nearby clinic for medical treatment from where she was referred to Doon Hospital. Next day i.e. on 18.10.2003, at about 14:10 P.M., P.W. 2 Preet Pal Singh, lodged First Information Report (Ext. A-1) with the Police Station, Raipur, Dehradun where a crime No. 111 of 2003 relating to offence punishable under Section 307 I.P.C. was registered against the accused/appellant. P.W. 6 Bhuvnesh Datt Sharma, investigated the crime, interrogated the witnesses, prepared the site plan and on completion of the investigation, submitted charge sheet against the accused/appellant, for his trial relating to offence punishable under Section 307 I.P.C.

4. On receipt of the charge sheet, it appears that the Magistrate concerned, after giving necessary copies to the accused, as required under Section 207 of Cr.P.C., committed the case for trial, to the Court of Sessions

Judge. The Sessions Judge, appears to have transferred the case for trial to Additional Sessions Judge/Fast Track Court-I, Dehradun. The trial court, after hearing the prosecution and the defence, framed charge of offence, punishable under Section 307 I.P.C. The accused/appellant, pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Simran Kaur (injured), P.W. 2 Preet Pal Singh (informant), P.W. 3 Rakesh Goel (eyewitness), P.W. 4 Head Constable Raj Kumar, who prepared check report (Ext. A-3) of the First Information Report and made necessary entries in the general diary, P.W. 5 Dr. S.S. Toliya, who medically examined injuries on the person of Simran Kaur and P.W. 6 Sub-Inspector Bhuvnesh Datt Sharma, the Investigating Officer. The documentary and oral evidence was put to the accused person under Section 313 of Cr.P.C. in reply to which he alleged that he has been falsely implicated in the crime. After hearing the parties, the trial court found accused/appellant Yogesh Chandra, guilty of offence punishable under Section 308 I.P.C. and after hearing on sentence, sentenced the convict to rigorous imprisonment for a period of three years and also to pay fine of Rs. 5,000/- in default of payment of which it is directed that the convict shall undergo rigorous imprisonment for further period of six months.

5. Before further discussions, it is pertinent to mention here the injuries found on the person of injured Simran Kaur (P.W. 1), observed by Dr. S.S. Toliya

(P.W. 5) on 17.10.2003, which are recorded in Ext. A-6, as under:-

1. ***Stitched wound 4 cm containing four stitches. 9 cm above right ear.***
2. ***Stitched wound on right side of upper lip containing five stitches, 2 cm in size.***
3. ***Lacerated wound 2cm X 2 cm on right forearm just above writs joint.***
4. ***Contusion 4cm X 2cm on the right side of elbow.***
5. ***Lacerated wound 3cm X 1cm on right upper arm, 6cm below top of shoulder.***
6. ***Complaint of pain on the right side of thigh.***

It is pertinent to mention here the fact that as per the prosecution, the injured was first taken to the private clinic before being taken to the Doon Hospital where her injuries were examined. As such, the stitched wounds indicate that the stitching was down in private clinic.

6. P.W. 1 Simran Kaur, the star witness of the case, has stated on oath that on the date of incident, she was coming towards her house at about 7:30 P.M. When she reached near her neighbour's (Rakesh Goel) house, she was attacked by accused/appellant Yogesh Chandra. P.W. 1 Simran Kaur, has clarified that she knew him, as

he was brother-in-law of his neighbour Mazumdaar. The witness further narrates that she was overpowered and the accused/appellant, started hitting her with stone, saying that she did not oblige him by accepting his request. According to this witness, she cried for help on which her father Preet Pal Singh and neighbour Rakesh Goel, came there. The witness has further stated that his father made attempts to apprehend the accused. As to the source of light, P.W. 1 Simran Kaur, states that there were tube lights and mercury lamps lighting the street.

7. The statement of this witness gets corroboration from the statement of P.W. 2 Preet Pal Singh (father of the injured), who came to her rescue on hearing shouts for help. P.W. 2 Preet Pal Singh, has stated that he took her injured daughter to near by clinic and got the stitching of the injuries done. The witness further states that since the private doctor referred the injured to the Doon Hospital, she was taken by him to Doon Hospital. This witness lastly states that on 18.10.2003, at about 2:00 P.M., he got lodged First Information Report with police station Raipur, District Dehradun.

8. P.W. 3 Rakesh Goel, a neighbour of the injured, has also corroborated her statement that she was attacked by accused/appellant Yogesh Chandra on the date of the incident.

9. On behalf of the appellant, Shri G.D. Kandpal, learned Amicus Curiae, argued that the First

Information Report is a delayed one and the appellant has been falsely implicated in the crime. Had there Been no explanation for delay in lodging the First Information Report, I would have accepted the argument. But since, the father was more concerned to get his daughter medically attended and to save her life, the delay in lodging the First Information Report is not fatal to the prosecution story in this case.

10. Next contention, advanced on behalf of the accused/appellant is that the appellant was arrested even before the First Information Report was lodged. No doubt, this fact is admitted to the prosecution that the accused was arrested even before First Information Report was lodged but this fact is not concealed by the prosecution rather it has been explained that in the night itself, on receiving oral information, accused was apprehended before First Information Report is formally lodged. The said explanation has come on the record in the statement of P.W. 6 Sub-Inspector Bhuvnesh Datt Sharma, the Investigating Officer.

11. For the reasons as discussed above, in the opinion of this Court, the trial court has committed no error of law or that of fact in convicting the accused/appellant under Section 308 I.P.C. The appellant is in jail and he is completing three years in couple of days. Considering the fact that the accused/appellant has already served three years in jail, this Court is of the view that fine of Rs. 5,000/- imposed on the appellant, is not going to serve any material purpose in this case.

In the facts and circumstances of the case, this Court is of the view that the sentence awarded against the appellant can be reduced by waiving the punishment to pay fine of Rs. 5,000/-. Accordingly, the appeal is partly allowed. The impugned judgment and order passed by trial court relating to conviction of the appellant under Section 308 I.P.C. and sentencing him to rigorous imprisonment for three years is maintained but the order directing to pay fine of Rs. 5,000/- is set aside. Accordingly, the appeal stands disposed of.

Dt. 16.10.2006 **(Prafulla C. Pant, J.)**

S